

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:11-CV-143-GCM

MICHAEL GREENE,)
Petitioner,)
v.)
UNITED STATES OF AMERICA,)
Respondent.)

ORDER

THIS MATTER is before the court on Petitioner's Motion for Reconsideration (Doc. No. 5) of the Court's prior Order on Petitioner's Motion to Vacate.

I. DISCUSSION

On March 24, 2011, Petitioner filed a Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. On September 9, 2011, this Court entered an Order dismissing Petitioner's motion without prejudice because Petitioner's criminal appeal to the Fourth Circuit Court of Appeals is still pending. On September 19, 2011, Petitioner filed a motion for consideration, in which he asks the court to reconsider its prior Order dismissing without prejudice his Motion to Vacate.

The Court will deny Petitioner's motion for reconsideration. As the court noted in its prior Order, absent extraordinary circumstances, this Court should not consider Petitioner's motion while review of his criminal case is pending on direct appeal. See Rules Governing Section 2255 Proceedings, Rule 5 (advisory committee note, stating that courts have held that motions to vacate are "inappropriate if the movant is simultaneously appealing the decision").

As the Court noted in its prior Order, Petitioner has simply not alleged any extraordinary circumstances warranting immediate review of his Motion to Vacate.

II. CONCLUSION

IT IS, THEREFORE, ORDERED that:

(1) Petitioner's Motion for Reconsideration of the Court's prior Order on Petitioner's Motion to Vacate (Doc. No. 5) is **DENIED**.

Signed: January 30, 2012



Graham C. Mullen
United States District Judge

